



HEADQUARTERS
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN: C.I.G. ROAD:NEW DELHI-110002.
<http://esic.nic.in>

No. A-24/15/1/2011-E.I

Dated : 04 .03.2014

ORDER

Whereas the Seniority List of Dy. Directors finalized by ESI Corporation on dated 31.07.97 was re-casted by the ESI Corporation vide Memo. Dated 24.01.08 in compliance of the Hon'ble CAT, Principal Bench, New Delhi order dated 14.07.05 in O.A. No. 2637/2004 filed by Sh. P.C.P. Mahapatra and others. After finalization of above seniority list, it became imperative to re-caste the seniority list applying the principles contained in direction of the Hon'ble Court to the remaining section of similarly placed Dy. Directors as it was felt that implementation of clarification cannot be restricted to a limited section of Dy. Directors. Accordingly, the seniority earlier fixed on 16.02.99 (finalized on 24.09.99) was re casted applying the principles contained in the Hon'ble CAT, order dated 14.07.05 and the officers of the said seniority list along with the Dy. Directors joined subsequently were taken together. The draft seniority list was issued on 21.02.08 and was finalized on 09.05.08. The said seniority list was challenged by Sh. M.K. Sharma and others in CAT, Principal Bench, Delhi vide OA No. 567/2009 and Hon'ble CAT, Principal Bench vide its decision dated 30/09/10 ordered that:

"Resultantly, as we do not find a prayer to quash the seniority list, we dispose of the OA with direction to the respondents to reconsider drawing up seniority list in the cadre of Dy. Directors, strictly on the basis of the principle culled out in DOP&T OM dated 03/3/08 and thereafter consider the claim of applicant for promotion, if eligible, alongwith all consequential benefits. While doing so, the observations made by us in the body of the order shall also be taken note of. The directions shall be complied with by the respondents within a period of 3 months from the date of receipt of a copy of this order. No cost."

The DOP&T OM dated 03/03/08 clarified that "while the inter-se seniority of direct recruit and promotees is to be fixed on the basis of the rotation of quota of vacancies, the year of availability, both in the case of direct recruit as well as the promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/selection and completion of pre appointment formalities as prescribed. It is further clarified that when the appointment against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the person so appointed shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The

वेबसाइट की विषय-सूची का प्रबन्धन.....
Website Contents Management.....
जायरी सं./ Diary No..... 327.....
दिनांक/ Date..... 5/3/2014.....

year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruit or an officer of the particular batch of promotees joins the post/service."

Hence in compliance of the direction of Hon'ble CAT the seniority list of Deputy Directors was recasted in accordance with the guidelines contained in the DOPT O.M. dated 03.03.2008 and revised seniority list has been issued on 14.09.2011 and subsequently finalized vide Memorandum dated 23.01.2012 after disposing of all the objections/representations received against the said seniority list.

Meanwhile, Shri Pranay Sinha filed a WP(C) No. 7408/2010 before Hon'ble High Court Delhi. The Hon'ble High Court vide order dated 16.03.11 dismissed the petition as withdrawn.

Against the above decision of Hon'ble CAT, Shri Pranay Sinha, Dy. Director filed a R.A. No. 95/2011 before Hon'ble CAT, which was dismissed by the Hon'ble CAT by its order dated 04.07.11.

Challenging the order dated 04.07.2011 of Hon'ble CAT, Shri Pranay Sinha & Anr. filed a Writ Petition WP (C) No. 5319 of 2011 before the Hon'ble High Court of Delhi. No stay was granted by the Hon'ble High Court in the above writ petition.

The Hon'ble High Court of Delhi in WP (C) No. 5319/2011 vide its judgment dated 30.09.2013 has ordered as under :

- (i) *"The order dated 30th September, 2010 passed by the Central Administrative Tribunal is hereby modified only to the extent that the respondents shall re-consider the seniority list in the cadre of Deputy Directors in terms of para 29 of UOI and Ors. Vs. N.R. Parmar & Ors.*
- (ii) *In case, the seniority list is not in compliance with the above directions, the respondents shall ensure that the seniority list is expeditiously drawn up in terms thereof.*

The writ petition is disposed of in the above terms."

The Supreme Court of India in the matter of UOI Vs. N.R. Parmar & Ors. in Civil Appeal Nos. 7514-7515 of 2005 observed the following in para 29 of the order dated 27.11.2012:

"Para 29 – A perusal of the OM dated 3.3.2008, would reveal, that a reference to paragraphs 2.4.1 and 2.4.2 of the OM dated 3.7.1986, has been made therein. Thereupon, the meaning of the term "available" used in paragraph 2.4.2 of the OM dated 3.7.1986, is statedly "clarified". In view of the conclusion drawn in the foregoing paragraph, the said clarification must be deemed to be with reference, not only to the OM dated 3.7.1986 but also the OM dated 7.2.1986. We have already noticed, in an earlier part of the instant judgement, the

essential ingredients of a "clarification" are, that it seeks to explain an unclear, doubtful, inexplicit or ambiguous aspect of an instrument, which is sought to be clarified or resolved through the "clarification". And that, it should not be in conflict with the instrument sought to be explained. It is in the aforesaid background, that we will examine the two queries posed in the preceding paragraph. We have already analysed the true purport of the OM dated 7.2.1986 (in paragraph 20 hereinabove). We have also recorded our conclusions with reference to the OM dated 3.7.1986 wherein we have duly taken into consideration the true purport of paragraph 2.4.2 contained in the OM dated 3.7.1986 (in paragraph 21 hereinabove). The aforesaid conclusions are not being repeated again for reasons of brevity. We have separately analysed the effect of the OM dated 3.3.2008 (in paragraph 26 of the instant judgement). It is not possible for us to conclude that the position expressed in the earlier office memoranda is unclear, doubtful, inexplicit or ambiguous. Certainly not on the subject sought to be clarified by the OM dated 3.3.2008. A comparison of the conclusions recorded in paragraph 20 (with reference to the OM dated 7.2.1986) and paragraph 21 (with reference to OM dated 3.7.1986) on the one hand, as against, the conclusions drawn in paragraph 26 (with reference to OM dated 3.3.2008) on the other, would lead to inevitable conclusion, that the OM dated 3.3.2008 clearly propounds, a manner of determining inter se seniority between direct recruits and promotees, by a method which is indisputably in conflict with the OMs dated 7.2.1986 and 3.7.1986. Of course, it was possible for the Department of Personnel and Training to "amend" or "modify" the earlier office memoranda, in the same manner as the OM dated 7.2.1986 had modified/amended the earlier OM dated 22.11.1959. A perusal of the OM dated 3.3.2008, however reveals, that it was not the intention of the Department of Personnel and Training to alter the manner of determining inter se seniority between promotees and direct recruits, as had been expressed in the OMs dated 7.2.1986 and 3.7.1986. The intention was only to "clarify" the earlier OM dated 3.7.1986 (which would implicitly include the OM dated 7.2.1986). The OM dated 3.3.2008 has clearly breached the parameters and the ingredients of a "clarification". Therefore, for all intents and purposes the OM dated 3.3.2008, must be deemed to be non-est to the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. Having so concluded, it is natural to record, that as the position presently stands, the OMs dated 7.2.1986 and 3.7.1986 would have an overriding effect over the OM dated 3.3.2008 (to the extent of conflict between them). And the OM dated 3.3.2008 has to be ignored/omitted to the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. In the light of the conclusions recorded hereinabove, we are satisfied that the OM dated 3.3.2008 is not relevant for the determination of the present controversy."

The Apex Court of India in the judgments dated 27.11.2012 in UOI & Ors. Vs. N.R. Parmar & Ors. has found the DOP&T O.M. dated 03.03.2008 deemed to be non-est as the same is in derogation of the earliest OM dated 07.02.1986 and 03.07.1986 and further analyzed the DoPT

OM dated 07.02.1986 and 03.07.1986 and Office Note dated 20.12.1999 & 2.2.2000 of DOPT and observed as under :

Para 22 : Undoubtedly an office note has no legal sanction, and as such, is not enforceable in law. Yet an office note is certainly relevant for determining the logic and process of reasoning which prevailed at the relevant point of time.....

Para 22(b) : It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the concerned appointees in terms of the "rotation of quotas" principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year.

Para 23(a) : If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2.2.2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.

Para 23 (b) The words "initiation of action for recruitment", and the words "initiation of recruitment process", were explained to mean, the date of sending the requisition to the recruiting authority.

Para 24 : A perusal of the letter dated 11.5.2004 reveals, that it adopts a position in clear conflict with the one expressed in the OMs dated 7.2.1986 and 3.7.1986, as well as, in the ONs dated 20.12.1999 and 2.2.2000.....

The Hon'ble Supreme Court therefore found no conflict among OM dated 7.2.1986, 3.7.1986 and ON dated 20.12.1999 & 2.2.2000. Hence, when MOF OM dated 8.9.2004 is examined by Hon'ble Supreme Court,(in para 24 of the judgment) the Hon'ble Court took note of the fact that "it would be relevant to noticeseniority of direct recruits would be reached with reference to initiation of process of recruitment in their case". The Hon'ble Supreme Court therefore deemed that OM dated 11.5.2004 of M.O.F. (which is in conflict with

OM dated 7.2.1986 & 3.7.1986 & ON dated 20.12.1999 & 2.2.2000) is superseded by OM dated 8.9.2004.

The above analysis of the Apex Court is also in accordance with the DoPT clarification F.No. 43019/23/99-Estt.(D) dated 29.02.2000 which stipulate that "..... It is also clarified that ordinarily the process of direct recruitment takes more than a year to be completed and if DR is to join in same year for getting seniority of that year then no DR will get seniority of the same year because as already stated the DR process takes more than a year. Hence, initiation of action of recruitment is sufficient."

Hence, I, A.K. Agarwal, Director General, ESI Corporation in compliance of the order of the Hon'ble High Court of Delhi in WP (C) No. 5319/2011 dated 30.09.2013 and in view of the observations of the Hon'ble Supreme Court of India in Civil Appeal No. 7514-7515 of 2005 in judgment dated 27.11.2012, am hereby withdrawing the seniority list of Deputy Directors finalized vide Memorandum No. A-24/15/1/11-E-I dated 23.01.2012 because this seniority list dated 23.1.2012 was finalized by restructuring the seniority of direct recruits with respect to their actual date of joining (as clarified by DOPT vide OM dated 3.3.2008 which is now declared 'non-est' by the Hon'ble Supreme court in the case of UOI Vs. N.R. Parmar & Ors. in Civil Appeal Nos. 7514-7515 of 2005). The seniority list of Deputy Directors finalized vide Memorandum no. A-24/15/1/2003-E.I.-col.II dated 09.05.2008 is now restored since the seniority list dated 9.5.2008 was finalized keeping in view the principles of fixation of seniority as contained in DOPT OM dated 7.2.1986 & 3.7.1986.

The seniority list of Deputy Directors finalized vide Memorandum no. A-24/15/1/2003-E.I.-col.II dated 09.05.2008 has been restored with following modifications due to revision of date of promotion of Shri A.S. Pandey (sl. No. 146) after exoneration of charges by the Reviewing Authority/ Court decision :

Name of the Officer S/Shri	Previous sl. No. in the seniority list dated 09.05.2008	Revised sl. No. in the seniority list dated 09.05.2008
A.S. Pandey	146	110
C.R. Paul	110	112
S.K. Mahananda	112	114
A.K. Pattnaik	114	116
Sharad Kumar	116	117 (A) between Shri Amrish Kumar Sharma (sl. No. 117) and Shri A.S. Chauhan (sl. No. 118)

(A.K. AGARWAL)
DIRECTOR GENERAL

Copy to :

1. All Officers concerned through their Controlling Officers.
2. PPS/PS to DG/ All Divisional Heads, Hqrs.
3. All Regional Director/Director I/c/ Joint Director I/c
4. Director (M) Delhi/ Director (M) Noida.
5. All Medical Superintendent; ESIC Hospitals/ ESIC Model Hospitals
6. All Dean ESIC Medical College/Dental College.
7. Insurance Commissioner (NTA)/Commissioner (NTA)
8. All Director/Joint Director; Zonal vigilance
9. Hindi Cell for Hindi Version
10. W.C.M. for uploading on ESIC website.
11. Personal file/ Guard File/Spare copy.